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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

State of Arizona, *ex rel.* Kristin K. Mayes,
Attorney General; et al.,

Plaintiffs,

v.

Michael D. Lansky, L.L.C., dba Avid Telecom;
et al.,

Defendants.

NO.: CV-23-00233-TUC-CKJ

**PLAINTIFFS' MOTION FOR ENTRY OF AN ORDER GOVERNING THE
PRODUCTION OF ESI AND HARD COPY DOCUMENTS**

Plaintiffs respectfully move, pursuant to Fed. R. Civ. P. 26(c), for entry of an order governing the production of electronically stored information ("ESI") and hard copy documents. The proposed order is attached as Exhibit A. Plaintiffs attempted to meet and confer with Defendants on many occasions as outlined herein but Defendants have failed to respond.

1 The Plaintiffs, 49 state attorneys general, filed this case against the Defendants
2 Michael D. Lansky, L.C.C., dba Avid Telecom (“Avid”), Michael Lansky (“Lansky”) and
3 Stacey Reeves (“Reeves”) (collectively, “Defendants”) on May 23, 2023, alleging
4 violations of the Telemarketing and Consumer Fraud and Abuse Act, the Telemarketing
5 Sales Rule, the Telephone Consumer Protection Act, the Truth in CallerID Act, and certain
6 state consumer protection statutes. On May 8, 2024, this Court granted in part and denied
7 in part Defendants’ motions relating to the case and ordered them to file an Answer by June
8 14, 2024. The parties took part in Settlement Conferences on December 4, 2024, and
9 February 10, 2025, but were unable to reach an agreement to resolve the matter.

10 Defendants served Plaintiffs with requests for production of documents (“RPDs” or
11 “Defendants’ Demands”) and requests for admissions on December 31, 2024. The demands
12 were directed to the Lead Plaintiff States of Arizona, Indiana, North Carolina and Ohio, as
13 well as to Plaintiffs that brought state law claims including California, Florida, Indiana,
14 Maryland, Nevada, New York, North Carolina, North Dakota, Rhode Island, Washington
15 and Wisconsin.¹ Responses were due February 3, 2025. With Defendants’ agreement to a
16 short extension, Plaintiffs provided written objections and responses to Defendants’
17 requests on February 7, 2025 along with a partial production of documents (“Plaintiffs’
18 Responses”). (Exhibit B, Plaintiffs’ Responses to Defendants’ RPDs). Plaintiffs’
19 Responses indicated that certain responsive documents were being withheld from
20 production at that time and would be produced within a reasonable time following entry of
21 a protective order and an agreement on the production of electronically stored information.

22 Plaintiffs filed an unopposed motion for the entry of a protective order on March 4,
23 2025 (ECF No. 107). The Court granted the motion and a protective order was entered on
24 March 11, 2025. (ECF Nos. 108 and 109).

25 Plaintiff specifically raised the need for an ESI protocol as early as February 3, 2025
26 in a communication to Defendants’ counsel regarding Plaintiffs’ responses to Defendants’
27 Requests. (Exhibit C, Email string including February 3, 2025). Plaintiffs’ written
28

¹ The Defendants’ demands were served on a total of thirteen of forty-nine Plaintiffs: eleven states that brought state law claims, two of which are also included in the Lead Plaintiffs group.

1 objections and responses to Defendants' Requests for Document Production memorialized
2 Plaintiffs' position that the parties needed to meet and confer regarding a protocol for
3 production of ESI. (Exhibit B at pp. 6, 33, 34, 36, 37). Plaintiffs attempted to schedule a
4 meet and confer with Defendants regarding a protective order and an ESI protocol on
5 several occasions between February 14 to February 26 but were unsuccessful. (Exhibit D,
6 Email string February 3 to February 26).

7 The Plaintiffs drafted an ESI protocol and sent it to Defendants on April 15, 2025
8 for review. (Exhibit E, Email string February 21 to May 5 at p. 4-5). Having received no
9 response, Plaintiffs sent a follow up email on April 28. (*Id.* at p.4). Counsel responded on
10 April 30 stating only "Please let us know when you are available to discuss." (*Id.* at p. 3-
11 4). Plaintiffs responded on April 30 offering to meet and confer the following day, May 1.
12 (*Id.* at p. 2-3). Defendants' counsel responded and requested availability to meet and confer
13 for the following week. (*Id.* at p. 2). Plaintiffs again responded on April 30 and offered to
14 meet and confer the following week on May 8. (*Id.* at p. 1-2). Having received no response,
15 Plaintiffs followed up on May 5 attempting to confirm the offer to meet on May 8. (*Id.* at
16 p. 1). Defendants' counsel responded declining the May 8 call and requested availability
17 for the following week. (*Id.* at p. 1). On May 5, Plaintiffs sent options for times to meet on
18 May 13. (*Id.* at p. 1).

19 On May 7, Defendants' counsel, Neil Ende, sent an email indicating his co-counsel,
20 Greg Taylor was out of the office for the next week and potentially also out the beginning
21 of the following week. In response, Plaintiffs sent availability to meet and confer on May
22 13, May 14, May 15, and May 16. (Exhibit F, Email string May 7 to May 12). Defendants'
23 counsel did not respond.

24 On May 19, Defendants' counsel responded to Plaintiffs' April 28 follow-up
25 indicating he had been out of the office and requested "a few days to clear the backlog".
26 Plaintiffs responded on May 20 and offered options for times to meet and confer on May
27 21 and 22. (Exhibit G, Email string Feb. 21 to May 20).

1 Neither of Defendants' counsel, Neil Ende or Greg Taylor, responded to Plaintiffs'
2 last attempts to schedule a meet and confer for May 21 or May 22. They have provided no
3 comments or feedback whatsoever on the ESI protocol sent to them on April 15, 2025.

4 Given the Defendants' lack of response, Plaintiffs seek the entry of an order
5 outlining an ESI protocol so that Plaintiffs may complete their discovery production.
6 Plaintiffs want to produce records without concerns that disputes over ESI protocols could
7 result in having to reproduce records or time-consuming back and forth communications
8 that could have been avoided. Plaintiffs also seek the ESI protocol to avoid any further
9 delays in production of Defendants' discovery.

10 Defendants' RFPs to thirteen Plaintiffs instructed Plaintiffs to produce ESI on
11 "DVD". Plaintiffs objected to the instruction in their written responses and agreed to meet
12 and confer. (Exhibit B at p. 6). Defendants have not responded. Plaintiffs produced
13 approximately 739 MB of ESI with its initial responses via secure file transfer rather than
14 copied to DVD. The Defendants have not objected. However, Plaintiffs have at least 7
15 terabytes of ESI yet to produce which would be the equivalent of over 1,500 DVDs. Setting
16 aside the antiquated nature of the request for production of ESI on DVDs, an order
17 establishing a protocol for production of ESI would also address other common issues such
18 as categories of ESI that are presumed to be inaccessible and not discoverable, specific
19 requirements for file formats to ensure ESI is produced in a reasonably usable form,
20 methods for applying redactions with annotations as to the basis for the redaction,
21 requirement for native format on certain ESI, use of search terms and filters, standards for
22 deduplication, and incorporation of the confidentiality designations pursuant to the
23 Protective Order (Dkt. 109).

24 By providing guidance in advance of production, an ESI protocol will facilitate and
25 expedite the flow of information between the parties and help to streamline any disputes
26 that may arise. Defendants have not objected to any of the substantive provisions outlined
27 in the proposed Order despite having received it on April 15, 2025.

28 For the foregoing reasons, Plaintiffs request their motion for the entry of an order
governing the production of ESI be granted.

RESPECTFULLY SUBMITTED this 18th day of June, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2025, I caused the foregoing Plaintiffs' Motion for the Entry of an Order Governing the Production of ESI and Hard Copy Documents to be filed and served electronically via the Court's CM/ECF system upon counsel of record.

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